IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/03/2004

CORAM

THE HON'BLE MR.JUSTICE M. CHOCKALINGAM

SECOND APPEAL NO.441 OF 1993

1. C. Arumugam
2. C. Subramaniam
3. C. Selvaraj
4. Muthathal .. Appellants

-Vs-

1. T.Arumugam
2. R. Sornavalli
3. R. Vellaichamy
4. R. Ramesh
5. R. Venkatesh .. Respondents

This second appeal is preferred under Section 100 of CPC against the judgment and decree dated 31.1.1992 made in AS No.30 of 1989 on the file of the learned Subordinate Judge, Sivaganga reversing the judgment and decree dated 21.12.1988 made in OS No.248 of 1988 on the file of the learned District Munsif, Sivaganga.

!For Appellants : Mr.K.Lavan
for Mr.E.M.Sudarsana Natchiappan

^For Respondents : Mr.S.Natarajan

:JUDGMENT

This second appeal is directed against the judgment of the learned Subordinate Judge, Sivaganga made in AS No.30 of 1989 wherein the judgment of the trial court in a suit for declaration and permanent injunction was reversed by granting a decree in favour of the plaintiffs.
2. The short facts for the disposal of this second appeal are as follows:
The first plaintiff's father Doraisamy Ambalam and the husband of the second plaintiff late Ramanathan Ambalam were brothers and the plaintiffs 3 to 5 are the children of the second plaintiff and late Ramanathan Ambalam. The suit property originally belonged to the ancestors of these plaintiffs. The great grand father of the first plaintiff and his brother executed a hypothecation deed on 22.10.1910 hypothecating the suit property to one

Subramanian Chettiar. The said Subramanian Chettiar filed a suit in OS No.752 of 1917 before the District Munsif, Sivaganga for recovery of mortgage debt and obtained decree. From the date of the delivery, the said Subramanian Chettiar had been in possession of the property till his life time and on his death, his son sold the land to Doraichamy Ambalam by a registered sale deed dated 26.12.1952. Hence the property belonged to the family of the plaintiff. The defendants claimed the property on the basis of certain Revenue Court proceedings before Settlement Department. Patta was issued in favour of the plaintiffs and the land has also been subdivided amongst the plaintiffs' family and till date they continued to be in possession of the property by paying kist. Now, recently, the Special Tahsildar for land records under the updating of land records has passed orders cancelling patta issued in favour of the plaintiffs and issued patta in favour of the defendants. The continuous payment of kists from 1958 till date with records of title proving the origin of their title and possession of the plaintiffs to the property. The defendants are trying to interfere with the possession of the property, and hence, there arose a necessity for filing of the suit.

3. The suit was resisted by the defendants stating that except the defendants 2 to 5, the first defendant is having other daughters; that they were not added as parties to the suit; that the plaint averments are false; that the suit property was not in possession of the predecessor-in-title of the plaintiffs; that the property was not mortgaged to Subramaniam Chettiar; that the property was allotted to the first defendant, subsequent to the partition between the first defendant and his pankalis; that the first defendant has been paying tax; that it is false to state that the first defendant attempted to trespass in to the suit property, and hence, the suit was to be dismissed.

4. The trial court framed necessary issues, tried the suit and dismissed the same. Aggrieved, the plaintiffs took it on appeal, where the judgment of the trial court was reversed and a decree was granted in their favour. Thus, the defendants have brought forth this second appeal.

5. At the time of admission, the following substantial questions of law were formulated by this Court for consideration:

1) Whether the patta issued under the Estate Abolition Act 26 of 194 8 is binding on the rival claimants after fulfilling all the appeal provisions?

2) Whether the records maintained by the Revenue authorities perfected after giving all chances of hearing according to the Revenue Board Standing Order is final upon the rival claimants?

3) Whether the up-dating land records scheme patta confirmed after satisfying all the requirements of appeal provisions in binding on the rival claimant?

6. Heard the learned counsel for the appellants and also the learned counsel for the respondents on those contentions.

7. This Court has paid its full attention on the rival submissions and made a thorough scrutiny of the materials available.

8. As could be seen above, the plaintiffs sought declaration in respect of the suit mentioned landed property measuring to an extent of 8 acres and 12 cents in S.No.276/2 basing on their title under Ex.A.1 to A.3. From those documents, it could be seen that the mortgage deed was executed in favour of one Subramaniam Chettiar by the plaintiffs' ancestors under Ex.A.1 dated 22.10.1910. Since the same was not discharged, a suit was filed in OS

No.752 of 1917 and following the decree, the property was brought in execution in EA No.439 of 1921. Ex.A.2 would evidence the delivery of the property to Subramaniam Chettiar. During the life time of Subramaniam Chettiar and after his life time, the property was under the enjoyment of one Kumarappan Chettiar, who was the son of Subramaniam Chettiar. The said Kumarappan Chettiar has executed a sale deed in the year 1952 under Ex.A.3 in favour of the father of the first plaintiff, and thus, the father of the first plaintiff got title to the property and it devolved upon the plaintiffs. 9. From Exs.A.4, A.5 and A.6, it could also be seen that originally pattas were also granted in favour of the plaintiffs' family. In order to prove their possession, the plaintiffs had relied on Ex.A.7 to Ex.A.50, the kist receipts, which would cover the period from 1959 to 1986 and also the adungal extracts from 9.6.1987 to 30.11.1988. It is pertinent to point out that the suit was brought by the plaintiffs in the year 1988, and thus, the above documents would speak of the title as to how the plaintiffs derived the title of the property and the property continued to be in their possession till the time of filing of the suit.

10. What was all contended by the defendants before the courts below and equally here also was that the property belonged to the family of the first defendant ancestrally; that there was a family partition among the members of the family; that a suit was filed in OS No.99 of 1952 and a rajinama decree was entered into between the parties, wherein this property was allotted to the first defendant and the same was shown as 10th item; that pursuant to the said Rajinama decree, the first defendant got the possession of the property and has been in continuous enjoyment of the same; that while the defendants came to know about the grant of patta, they made an application before the Tahsildar; that the patta granted in favour of the plaintiffs were cancelled and pattas were issued in favour of the defendants; that though the same was agitated by the plaintiffs before the appellate forum and also in the High Court in WP No.264/1962, their claims were rejected, and thus, the grant of patta in favour of the defendants and the cancellation of patta in favour of the plaintiffs have become final.

11. Though the writ proceedings came to an end in the year 1964, the plaintiff have brought forth the suit in the year 1988, i.e. after a delay of 22 years. It is not in controversy that pattas were originally granted in favour of the plaintiffs' predecessor-in-title under Exs.A.4, A.5 and A.6. While the rival claim was made by the defendants, patta was granted in their favour. It is true that a writ petition filed by the plaintiff in WP No.264/62 was dismissed, but with an observation that the plaintiffs could approach the civil Court and establish their title. It is also true that there was a delay of 22 years in filing the present suit. But, the plaintiffs come forward to state that the property continuous to be in their possession all along as it would be quite evident from the available materials and since there was an attempted encroachment in the peaceful possession and enjoyment of the property, there arose a necessity in filing the suit.

12. Needless to say that there were settlement proceedings, wherein pattas were issued in favour of the defendants. Even it was also observed in WP No.264/62 that the plaintiffs could establish their right by approaching the Court of Civil law. Now, the instant suit was brought forth seeking declaration of their title and for permanent injunction also. At this juncture, it has to be pointed out that the plaintiffs have placed sufficient

documentary evidence to show that they have been in continuous possession of the property till the time of filing of the instant suit. Under the stated circumstances, the suit was filed after 22 years from the time of the dismissal of the writ petition cannot be a reason to deny the relief asked for. If it was found by sufficient evidence that they are entitled to, it has to be pointed out that the defendants have not stopped with the denial of title of the plaintiffs, but also claimed title to the property. No documentary evidence has been brought forth to speak the origin of the title except the mere assertion that the property belonged to them ancestrally and subsequently, by way of a rajinama decree in OS No.99 of 1 952, it was divided among the members of the family and that it came to the hands of the first defendant. But, no documentary evidence was available. Even the Rajinama decree would not be binding on the plaintiffs, since they were not parties of the said proceedings. On the contrary, the plaintiffs have proved title of the property and continuous possession by sufficient documentary evidence, as discussed above.

13. Hence, the first appellate court, on discussion and consideration of the evidence, in extenso, has granted the relief in favour of the plaintiffs as asked for and rightly too. This Court is unable to notice any reason to interfere in the judgment of the first appellate Court. This second appeal fails and the same is dismissed, leaving the parties to bear their costs.

Index : Yes
Internet : Yes

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To
1. The Subordinate Judge, Sivaganga
2. The District Munsif, Sivaganga
3. The Record Keeper, VR Section,
High Court, Madras